**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

# CRIMINAL APPEAL No. 1100 of 1993
# With
# CRIMINAL APPEAL No. 1101 of 1993

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.P.DHOLAKIA**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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**MAHENDRASINGH T JHALA - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**

MR PM THAKKAR for Appellant(s) : 1 in Criminal Appeal No.1100 of 1993
MR JM PANCHAL for Appellant(s) : 1 in Criminal Appeal No.1101 of 1993
MR KP RAVAL, APP for Opponent(s) : 1 in both

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**CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**

**and**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

**Date : 12/09/2006**

**COMMON ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)**

1. Criminal Appeal No.1100 of 1993 under Sec.374 of the Code of Criminal Procedure ('the Code' for short) has been filed by the appellant-original accused No.2 while Criminal Appeal No.1101 of 1993 has been filed by the appellant-original accused No.1 who have been convicted to suffer RI for life and to pay a fine of Rs.5,000/-, in default, to suffer RI for 2 years for the offence punishable under Secs.302, 34 and 114 of IPC vide judgment and order dated 12-8-1993 delivered by the learned Addl. Sessions Judge and 2nd Joint District Judge, Ahmedabad(Rural) at Mirzapur, in Sessions Case No.149 of 1991.
2. The case of the prosecution in short is that on 19-12-1990 when both the accused and the deceased Bhagwatsinh Dansinh were sitting in the quarter of Samundarsinh (accused No.1) and were consuming liquor, some quarrel took place and the accused No.1 brought a tin of kerosene from his kitchen and poured kerosene on the deceased and set him on fire. Bhagwatsinh Dansinh died on the spot. Mahendrasinh (accused No.2) allegedly helped Samundarsinh in the commission of said offence. Hence, a complaint was filed by the complainant before Railway Police Station, Viramgam,

for the offence punishable under Secs.302 and 114 of IPC and it was registered as Viramgam Railway Police Station I.C.R.No.87 of 1990. Police started investigation, recorded statements of witnesses, drew inquest panchnama in presence of panchas and also made arrangements for sending dead body of the deceased for post mortem. He also prepared panchnama of scene of offence, seized muddamal by drawing panchnama to that effect and sent the same to FSL for analysis. During the course of investigation, the accused were arrested. On receiving the post mortem and FSL reports, same were kept in investigation file. Upon completion of investigation, charge sheet was submitted against the accused in the Metropolitan Magistrate Court.

3. As the offence alleged against the accused was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the Court of Sessions at Ahmedabad (Rural) where it was numbered as Sessions Case No.149 of 1991 and transferred to the Court of learned Addl. Sessions Judge and 2nd Joint District Judge, Ahmedabad(Rural) at Mirzapur, for trial. The learned Judge framed charge against the accused. The

accused pleaded not guilty to the charge and claimed to be tried.

4. To prove the case against the accused, the prosecution examined several witnesses and also relied on various documentary evidence. On submission of closing purshis by the prosecution, learned Addl. Sessions Judge recorded the further statement of the accused under Sec.313 of the Code. Thereafter, on hearing the learned advocates appearing for the respective parties, learned Addl. Sessions Judge, & 2nd Joint District Judge, Ahmedabad (Rural), delivered the impugned judgment, which gave rise for the original accused No.2 to prefer Criminal Appeal No.1100 of 1993 and for the original accused No.1 to prefer Criminal Appeal No.1101 of 1993.

5. As both the appeals arose out of the same judgment and order dated 12-8-1993 passed in Sessions Case No.149 of 1991 by the learned Addl. Sessions Judge & 2nd Joint District Judge, Ahmedabad (Rural), they are heard together and are being decided by this common judgment.

6. Heard learned Senior Counsel, Mr.P.M.Thakkar for the appellant-original accused No.2 of Criminal Appeal No.1100 of 1993 and Senior Counsel, Mr.J.M.Panchal for the appellant-original accused No.1 of

Criminal Appeal No.1101 of 1993 and learned APP, Mr.K.P.Raval for the State, in both the appeals. They took us through the evidence of various witnesses. We will discuss their evidence one by one.

7. Babaji Dansinhji, who has been examined as P.W.2 at Ex.10 and who is the brother of deceased, deposed that he received information about the incident from Rabani Abbasbhai and, therefore, he immediately went towards RPF Railway Headquarters near the residence of Samundarsinh.

8. Prosecution witness No.2 Rabanibhai Abhasbhai at Ex.11 deposed that when he was going towards Railway Quarters for purchasing chicken, he saw 8-10 persons gathered in the Railway Quarters and due to curiosity, he also went there. When he entered into the quarters, he saw Bhagwatsinh Dansinh lying in burnt condition and appellant-accused Sumundarsinh was running in burnt condition having put on only knicker. Hence, he informed the same to the brother of the victim i.e. P.W.1 Babaji.

9. Another witness P.W.3 Hussainbhai Tharubhai who has been examined at Ex.12 deposed that when he was going towards Rajbai-ma temple, he saw the smoke coming out from one of the railway quarters and people were gathered

there. At that time, it was seen that Samundarsinh was running with only knicker on his body and Mahendrasinh with only khakhi pant on his body. When he went inside, he saw dead body of the deceased having the smell of kerosene. He also identified both the accused in the Court. In his cross examination, he admitted to have known the brother of the victim who is the Councilor of Viramgam Municipality. He also admitted that after seeing the incident, he left the premises and went home but not informed the police.

10. Another witness Premchand Vasantram Tiwari, P.W.3 at Ex.13, deposed that he was serving as RPF Constable at the relevant time and whose office was situated just opposite to the quarter of accused Samundarsinh. He deposed that at the time of incident, he and Sub Inspector, Mr.D.L.Bhatt, were there in the office. According to him, since lot of smoke was coming out from the quarters, he and Mr.Bhatt could not enter into the premises. However, Mr.Bhatt informed the concerned Police Station by way of telephone.

11. They drew our attention towards the evidence of P.W.5, Devlal Bachilal Bhatt at Ex.14 and also of P.W.6 Satyadev Prasadpati Rammore at Ex.15. They gave

similar version as has been given by P.W.4, Premchand Vasantram Tiwari.

12. Drawing our attention towards the evidence of prosecution witnesses Nos.3, 4, 5 and 6, the learned counsel for the appellant contended that it is the prosecution witness No.5 who informed the police on telephone about the incident. However, no vardhi is coming forth on record to prove the say of these witnesses.
13. They also drew our attention towards the evidence of P.W.7, Vinodbhai Omprakash Gupta Ex.16, who is the panch of inquest panchnama of deceased, and also towards inquest panchnama Ex.17.
14. Our attention was further drawn towards the evidence of P.W.8, Satyaprakash Laxmichand Gupta at Ex.18. He however did not support the say of the prosecution. According to learned APP, he is the panch of search of accused Mahendrasinh.
15. Next witness is P.W.9 Subhashchandra Banvarilal Ex.19, who is another panch of panchnama of original accused No.2. There are panchnamas of scene of offence, arrest of accused, etc. Most of the panchas have not supported the say of the prosecution. However, the prosecution relied mainly on the oral evidence of Investigating Officer, P.W.22 Nisar Mahammad Sultankhan Malek

Ex.47.

16. Learned counsel for the respective parties further drew our attention towards medical evidence namely, post mortem note Ex.38 as well as death certificate of deceased Ex.39 more particularly towards cause of death given by the doctor in post mortem note.

17. It was contended by the learned counsel for the appellants that cause of death given by the doctor was primary one as no final opinion as to the cause of death has been given by doctor who performed the post mortem.

18. We were taken through the evidence of P.W.17, Dr.Ramesh Trilokchand Jain at Ex.32. He is the doctor who examined the appellant-original accused No.2-Mahendrasinh. According to him, Mahendrasinh was having 2-3 degree burns on his right hand, chest and face and 15% burns on the body as a whole and was admitted in the hospital. He proved injury certificate of Mahendrasinh at Ex.33. He categorically admitted in his cross examination that injury on Mahendrasinh is possible if somebody tried to extinguish fire or save a person in burning condition. He further admitted that mental condition of the person who is having burns injury will be deteriorated.

19. As per the evidence of Dr.Kiritbhai Jayanti Patel, P.W.18 at Ex.37, who is the doctor and who performed post mortem on the dead body of the deceased, he received the dead body with police yadi on 10-11-1990. He started post mortem at 6.30 a.m. and completed at 7.30 a.m. Prosecution also proved post mortem report Ex.38 and death certificate Ex.39. He also proved external marks of injury narrated in column No.17 and categorically deposed that the deceased received 100% burns injury of second and third degree and all those injuries were anti-mortem. He categorically admitted in his cross-examination that when a person is having 100% burns, then possibility of suicide will be more as per medical jurisprudence.
20. They also took us through the evidence of Dr.Hasumatiben Ranchhodbhai Patel at Ex.43. Through her, prosecution proved the injury of appellant accused Samundarsinh and injury certificate Ex.45. After seeing the case paper, she deposed that Samundarsinh was transferred from Viramgam hospital to Civil Hospital, Ahmedabad, and he was treated there as indoor patient till 18-4-1991 i.e. practically for a period of four months and was having 51% burns injury.
21. Showing the evidence of above referred

witnesses and also the relevant discussion made by the court below in the impugned judgment, it was contended by the learned counsel for the appellants that main witnesses relied upon by the prosecution are chance witnesses or interested witnesses namely, friend, brother of the deceased, who is the Clerk of Advocate as well as Councilor of Viramgam Municipality. It was further contended that act of the present appellants is natural one. The fact of incident having taken place in the RPF Railway Quarter has not been disputed by the learned counsel for the parties. They contended that there are no eye witnesses worth the name and hence, the case is based on circumstantial evidence. According to them, there are no incriminating material connecting the accused with the crime in question and prosecution failed to establish the link in the chain of circumstances. If the case putforward by the prosecution is believed to be true then it means that they are able to establish that there was fire in Quarter No.304-D allotted Samundarsinh and smoke was coming out on broad day light at about 2.00-2.30 p.m. and people were gathered there. From the house, aforesaid three witnesses have seen two persons running out to escape from

the place in burning condition. Out of two, one had put on nicker and the other had put on khakhi pant. Except that, there was no other evidence connecting the accused with the crime in question. It was further contended that there are no evidence worth the name by which the prosecution is able to prove that it was an accidental fire or was as a result of alleged incident. The prosecution has not been able to prove the death as homicidal or suicidal and hence, the accused cannot be connected with the crime in question except the fact of their receiving injuries and for which, it was contended that the injuries sustained by the accused were caused when they were trying to put out fire to save the deceased which, according to them, is highly probable than the probability of circumstances as narrated by the prosecution. It was also contended that they did not escape from the scene of offence but they tried to run away as they received grievous injuries of 2-3 degree burns and hence was a natural conduct. Taking us through the physical condition of both the appellants, it was contended that normal conduct of a person who received burns injuries would be to remove the cloths to extinguish fire or to minimise

the injuries and the person who sustained 51% burn injuries had removed almost all clothes whereas the person with 15% injury had removed only shirt. Here in this case, the injuries proved by the prosecution shows that the person who received injuries on hand, neck and face had removed shirt and person who received injuries on the body as a whole had removed all the clothes and, therefore, if they escaped after trying to save the deceased then, they cannot be said to have escaped after committing the offence. Taking us through the FIR which has been given by the appellant-accused-Mahendrasinh, it was contended that at the earliest within few hours, he voluntarily went to the Police Station in burning condition and narrated the incident before the police and, therefore, act of the accused cannot be said to be falling under the serious offence of Sec.302 IPC more particularly when prosecution has failed to establish the death as homicidal or suicidal. It was therefore contended that it is a case wherein benefit of doubt is required to be given to the appellant accused and the accused be acquitted by quashing and setting aside the impugned judgment and order of conviction.

22. Learned APP for the State, Mr.Raval, however, placed reliance upon the evidence shown to us by the otherside and contended that the prosecution is able to prove the presence of the appellants at the scene of offence. The prosecution also proved that the quarter in question where the incident has been taken place was allotted to appellant-accused-Samundarsinh wherein dead body of the deceased was found in burning condition. Once it is established along with other evidence on record that both the appellants-accused were coming out from the house in burning condition, their presence has been established at the time of incident. Hence, now it is their duty to explain as to their presence at the place of incident and if explanation is not found to be satisfactory, it should be inferred that they are the real culprits. It has been further contended that both the accused received burns injuries which have been proved by the prosecution and, hence, if we do not believe the evidence of witnesses who have seen the accused coming out from the quarter where the incident has taken place, then also, their physical condition and injuries which they received proved that they were there at the time of incident. Taking us through other evidence

including statement of appellants accused recorded under Sec.313 of the Code, it was contended that their case is that they tried to save the deceased. He further contended that prosecution could prove the chain of circumstances and there is no lacuna worth the name which keep away the accused from the crime in question. He further contended that even as per the FSL and vicera reports, it was found that deceased had consumed alcohol. He further contended that both the accused were there and accused No.1 sprinkled kerosene and set him on fire while accused No.2 helped the accused No.1 in the commission of offence and hence, both are jointly and severally liable for the commission of crime. In view of the above, he submitted that no interference is required in the impugned judgment and order of conviction.

23. We have gone through the oral as well as the documentary evidence shown to us by the learned counsel for the respective parties together with the reasoned judgment delivered by the court below. We have also considered the contentions raised and arguments advanced by the learned counsel for the respective parties. Court below in para 25 of its judgment narrated the evidence and gave elaborate reasoning.

However, the main reason stated for bringing the guilt against the accused was their act of remaining absconding from the scene of offence and tried to escape from the scene after receiving injuries. We have considered the same along with the contentions raised by the learned counsel for the respective parties.

24. It is established that the quarter in question i.e. No.304-D is an RPF Railway Quarter which was allotted to Samundarsinh and he was in occupation of the same. Inquest panchnama, panchnama of scene of offence and statements of witnesses clearly show that deceased was found in burning condition in the above referred quarter with 100% burns. Both the appellants accused also received burns injuries i.e. Mahendrasinh with 15% while Samundarsinh with 51% and both were admitted in the hospital for treatment. Samundarsinh took treatment for 4 months as an indoor patient from the Civil Hospital, Ahmdabad, while Mahendrasinh was treated in Viramgam only. Evidence on record also shows that after the incident within few hours, Mahendrasinh voluntarily went to Police Station in burning condition in an autorickshaw and narrated the incident and from where he was sent to hospital for treatment with police

yadi. It appears from the record that previously case was investigated by the police as A.D. note and almost all investigation was completed and practically all evidences were collected. It also appears that though it has been admitted by both the Police Officers, the Officer who conducted A.D.Inquiry No.31/90 categorically stated that when the investigation was handed over by the concerned Officer to the Officer conducting the investigation of C.R.No.I-87 of 1990, all the investigation papers of A/D note were handed over. However, the officer, who investigated C.R.No.I-87 of 1990 i.e. the offence in question denied on oath to have supplied any such papers even after demand by the advocate.

25. It is an undisputed fact that post mortem was performed by Dr.Kirit Jayantibhai Patel. He gave primary cause of death in the post mortem note at Ex.39 reserving the final cause of death to be given on arrival of vicera report. However, even after receipt of vicera and FSL reports, no final cause of death has been given by the concerned doctor. Moreover, the doctor categorically admitted that when a person received 100% burns injuries, then possibility of suicide cannot be ruled out

and on the contrary it would be much more. Apart from the above, prosecution could not prove whether the death of the deceased was homicidal or suicidal.

26. In the background of the aforesaid facts, we have evaluated the evidence on record along with the reasoned judgment delivered by the court below.

27. As per the evidence of three witnesses, though chance ones, the accused received burns. If accused did not receive any burns injuries then, we would not have believed their say. However, both the accused received burns injuries and thus their presence at the time of incident has been established. This is substantiated by the evidence established on record that two persons were coming out from the Quarter No.304-D of RPF Railway Quarters in burning condition of which, one had put on nicker while the other had put on only pants. Apart from that, there are no other evidences to connect them with the crime in question. However, the prosecution failed to establish the role of the present appellants with the crime in question. The explanation given by the appellants for having sustained the injuries was that they sustained the injuries when they were trying to save the deceased. Hence, the

link in the chain of circumstances has not been proved by the prosecution.

28. On a careful consideration of the conduct of the appellants accused, we find that their conduct was natural in the given circumstances. This is more particularly so in view of evidence on record of three independent witnesses i.e. PSI, Police Constable Tiwari and other person whose office is situated opposite to the quarter in question wherein they categorically deposed that since there was fire in Quarter No.304-D of RPF Quarters, they immediately went to the place of incident but could not enter in the quarter due to fire and smoke. Even if it is presumed that they were present there then natural conduct of the person visualizing such a situation would be to save the burning person. When they find their own life to be in danger if they try to save the burning person, they would try to escape from the scene of offence and this has been happened in the present case. While trying to save, as they received grievous 2 and 3 degree burn injuries to the extent of 51% and 15% respectively as has been proved by the prosecution, they had to remove the clothes. The person who received 51% injuries had removed almost all the clothes

and tried to escape with only nicker on his body while the person who received injuries of 15 % on hand, chest and face had removed only shirt and tried to escape with only pant on his body. In these circumstances, it cannot be said that after the incident, intentionally they tried to escape from the scene of incident. Apart from that, within few hours, Mahendrasinh went to the Police Station in an autorickshaw and narrated the incident to the police. Thereafter, he was sent to hospital with police yadi for taking treatment. Other accused-Samundarsinh also remained in hospital for a period of four months. In view of the aforesaid also, it cannot be said that they are the persons who tried to escape from the scene of offence after commission of offence in question.

29. Thus, the prosecution is able to prove only to the extent that the appellants were coming out from the scene of offence in burning condition. However, they are not able to connect the accused with the crime in question. The prosecution has also failed to prove whether death of the deceased was homicidal or suicidal. The aspect as to whether fire occurred in Quarter No.304-D is accidental or not or has taken place as narrated by the

prosecution has also not been proved by the prosecution. In absence of all these aspects and in absence of weak evidence appearing on record, though the unfortunate incident of death of the deceased has taken place, the appellants cannot be fastened with such a serious offence of having committed the offence under Sec.302 of IP Code nor can they be liable in any other manner for the said incident and hence, benefit of doubt is required to be given to both the appellants accused. No dispute could be pointed out as existing between the deceased and the appellants for the alleged incident and hence, no motive could be established by the prosecution for the appellants to commit the murder of the victim. Thus, we hold that the offence in question has not been proved by the prosecution against the appellants and hence, these appeals are required to be allowed and the impugned judgment and order of conviction passed against the appellant are required to be quashed and set aside.

30. Both these appeals are allowed. The impugned judgment and order dated 12-8-1993

passed by the learned Additional 2nd Jt. Dist Judge (Rural), Ahmedabad, in Sessions Case No.149 of 1991 convicting the appellants-accused are quashed and set aside. The appellant, original accused No.2-Mahendrasinh T.Jhala, of Criminal Appeal No.1100 of 1993 and appellant, original accused No.1 Samundarsinh Dorilal Jat (Caudhari), of Criminal Appeal No.1101 of 1993 are ordered to be set at liberty forthwith, if not required in any other case. The appellants are on bail and hence, their bail bonds shall stand cancelled.

31. Office shall place a copy of this judgment in each matter.

(R.P.DHOLAKIA,J.)

(H.B.ANTANI,J.)

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